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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/082,514	02/25/2002	Robert Metzger	5490-000244	3723
27572	7590	06/06/2005	EXAMINER	
HARNESS, DICKEY & PIERCE, P.L.C. P.O. BOX 828 BLOOMFIELD HILLS, MI 48303			WILLSE, DAVID H	
			ART UNIT	PAPER NUMBER
			3738	

DATE MAILED: 06/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/082,514	METZGER, ROBERT
	Examiner Dave Willse	Art Unit 3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 28 February 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,2 and 4-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 24 and 25 is/are allowed.
- 6) Claim(s) 1,2,4-23,26-37 and 39 is/are rejected.
- 7) Claim(s) 38 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>9/1/09</u> | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4-23, 26, 27, 30-33, 35-37, and 39 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Moulin, FR 2 734 709 A1: Figures 29-31. Regarding claim 1 and others, the bearing member encompasses the slide 3 (which may or may not be present: English translation, page 6, line 18), the shock absorbing plate 4, and the intermediate plate 5; the tibial component 2 is thus monolithic. The bearing member includes a third bearing surface operable to articulate with the tibial bearing surface by virtue of the characteristic described at page 3, lines 10-13, and page 7, lines 13-14 and 23-25, of said translation. Regarding claim 2 and others: page 8, last full paragraph, of said translation. Regarding claim 6 and others: ligament L₁ in Figure 29. Regarding claim 7 and others: rotatable couplings are deemed to be inherent because of the flexibility of the artificial ligaments (*ibidem*: page 9, line 2). Regarding claims 9-11 and others, both the plate 5 pivot and the tibial component 2 pivot (*ibidem*: page 7, lines 12-14) extend from the tibial component and certainly affect movement of the bearing member; either pivot is *capable* of being removed, whether or not such was the intent. Regarding claim

13, the bearing member 3 or 3-5 is able to translate in all of the listed directions *relative to the femoral component 1*; attention is also directed to Figures 25-28.

Claims 28, 29, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moulin, FR 2 734 709 A1. To replace the fixation of the artificial ligaments L₁-L₃ to the femoral element 1 and the tibial component 2 by retainers and screws with ball and socket connections would have been obvious to the ordinary practitioner in order to reduce stress concentrations and wear at the screw heads and the ligament ends; with Moulin having been open to other types of securing means (*ibidem*: page 9, lines 2-6).

Claims 24 and 25 are allowed.

Claim 38 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

RU 2 051 647 C1: spherical recess 4; spherical head 14.

RU 2 076 667 C1: separation stem (English abstracts; Derwent title).

The Applicant's remarks have been considered and are adequately addressed in the grounds of rejection presented above.

All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action

after the filing of a request for continued examination and the submission under 37 CFR 1.114.

See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to Dave Willse at telephone number 571-272-4762. The examiner's supervisor is Corrine McDermott, who can be reached at 571-272-4754



Dave Willse
Primary Examiner
Art Unit 3738